Supreme Court, U.S.
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No. 02-1854

In The
Supreme Court of the United States

MARIE G. KANESHIRO
Surviving spouse of CALVIN T. KANESHIRO
Petitioner,

v.

HOLMES & NARVER, INC. and
WASAU INSURANCE CO.,
Respondents,

and

DIRECTOR, OFFICE OF WORKERS
COMPENSATION PROGRAMS, UNITED STATES
DEPARTMENT OF LABOR,
Party-In-Interest.

On Petition For Writ of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

Petitioner's Brief in Reply To Respondent's Opposition To Petition For Writ of Certiorari

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QUESTION PRESENTED

1) Was Sec. 20(a) presumption wrongly denied because of ALJ DI Nardi's judicial discretion, who arbitrarily and capriciously failed to follow the Governing Case Law in 1997. Instead of working entirely from the transcript, he accepted the erroneously filed briefs by the Employer. Thus, misapplying the process of Justice, which caused the other Courts to do so also, working in an opposite or contrary direction.

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II. PETITIONER'S BRIEF IN REPLY TO RESPONDENTS OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Claimant's contention is, Judge DiNardi correctly applied the presumption law to the incorrect facts, which led to an erroneous result. If the judge correctly interprets the law, but applies it to the wrong facts, a mistake of fact has occurred. Whereas if the judge reaches the wrong result based on the true facts, there has been a mistake of law.

Respondent's analysis assumes mistake of law as opposed to the petitioner's focus which has always been on the mistake of fact, made by ALJ DiNardi. His conclusion was based upon misapplication of the facts in it's contextual entirety. His decision was arbitrary and capricious.

Judge DiNardi, after full review of all arguments, on January 21, 1999, granted claimants motion for modification and ordered a new trial. This determination was not done lightly since he was the very judge who issued a thorough 27 page decision denying benefits.

The parts of the foundation upon which ALJ DiNardi rested was false, leading to an erroneous conclusion. Judge DiNardi chose not to explore the complex details of the 1st trial, 343 exhibits and 5 volumes of testimony. After only three months of review and analysis, he denied benefits. Judge Bober said, "it will be an intellectual and legal challenge to read all - read and analyze". TR. Vol. 5 Page 36, line 20, 21.

The BRB (9/2001) implied, Judge DiNardi subsequently weighed all the evidence of record, however, he weighed it based on his misapplication of the employer's deceptive briefs (appendix H)[1]. Employer also disputed facts

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[1] All references to appendices relate to the appendices attached to the Petition for Writ of Certiorari filed by Petitioner Marie G. Kaneshiro.

already established by Judge Bober, the Doctrines of *res judicata* apply to keep employer from disputing these facts. A matter which has been already conclusively decided by a court.

Employer went completely against Section 31(c) of the LHWCA, Employer misrepresentation. (33 USC. 931(c)), and Judge DiNardi chose to accept their false briefs rather than

address all of the medical evidence of record in its entirety, as so ordered by the BRB March 18,1996.

III. REASONS FOR GRANTING PETITION

Issues presented does involve issues of national importance.

Radiation health effects has been profoundly shaped by the cold war legacy of secrecy and efforts to minimize public concerns about nuclear weapons and it's effects of ionizing radiation. Scrutiny of established facts and it's evidence, are essential to progress in any discipline.

It is unfair to assume that weapons testing will not recur in the foreseeable future, as the United States did indicate that preparations were underway at the Nevada test site. The administration fiscal year 2003 budget request to congress, asks for 15 million to ramp up Nevada test site readiness.

Nuclear testing will resume, and workers will be exposed to radiation from these testing. Our government has life and death power over thousands and someone must take responsibility when an injustice is done, we have a duty not to permit human beings to be unjustly used, disrespected, exploited and injured. Someone must make right the wrong that was done.

It has been fourteen years since our claim was first filed. The road to compensation is long and complicated. Tragically, Mr. Kaneshiro couldn't wait.

IV. CONCLUSION

This petition relies on the accepted and usual course of judicial proceedings which Judge DiNardi seriously departed from.

For all the above reasons, this Petition should be granted.

DATED: Laupahoehoe, Hawaii, July 5, 2003

Respectfully submitted,

Marie G. Kaneshiro